Not Reported in N.E.2d
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(Cite as: 1990 WL 10630 (Ohio App. 2 Dist.))

Court of Appeals of Ohio, Second District, Montgomery County.
Tamara PARKER, Plaintiff-Appellant,
v.
James L. PARKER, Defendant-Appellee.
No. 11496.

Feb. 5, 1990.
Marylee Gill Sambol, Trotwood, for defendant-appellee.

Konrad Kuczak, Dayton, for plaintiff-appellant.

OPINION

WILSON, Judge.

*1 Tamara Parker filed a complaint for a divorce on January 22, 1988. She also asked for alimony, equitable division of property, and support for and custody of the parties' three minor children.

James L. Parker asked for essentially the same relief in his answer and counterclaim.

This case was heard by a visiting judge from Xenia. The first day of trial was held in Dayton on May 17, 1988.

On May 24, 1988, the trial judge filed a "Judgment entry" denying the plaintiff's request for a divorce and granting the defendant a divorce. The "judgment entry" provided in part:

By this Judgment Entry the Court hereby sets aside the marriage that has existed by and between Tamara Parker and James Parker since April 2, 1988.

Issues of custody, visitation, support, alimony and division of property were left to the subsequent determination of the court.

On the same date a second "Judgment Entry" was filed by the trial court ordering "that subsequent hearings be held in the visiting judge's resident courtroom in Xenia."

The second day of trial was held in Xenia on October 17, 1988.

On December 9, 1988, the trial court filed a "decision" which "pertains to all remaining issues."

In its decision the trial court ordered that the marital residence be sold and that the first $20,000 of net equity be granted to the plaintiff. Any amount of the equity in excess of $20,000 to be divided equally between the parties. The court then ordered distribution of the tangible and intangible property of the marriage and the debts of the marriage.

Section 8 of the "decision" provided in part:

Upon review of the testimony at trial, the psychological reports submitted to this Court, and pursuant to Section 3109.04 of the Ohio Revised Code, the Court hereby orders that custody of the three minor children be vested with the Defendant father * * *. The Court, in arriving at this decision, has * * * based its Decision solely on the best interests of the children involved.

The decision also provided for the payment of child support by the plaintiff and ordered the defendant to pay plaintiff alimony in the amount of $80 per week for eighteen months.

It is unclear whether the trial court intended his "Decision" to be a "Judgment." It appears to be "a decision announced" within the meaning of Civ.R. 58. It was clearly labeled a "decision" and not a "judgment;" however, it reads like a judgment. The "decision" also appears to have been subsequently altered by the addition of the word "order" immediately after the word "decision." It is also clear that the "decision" of December 9, 1988 is the first order in this case which could properly be called a final order or judgment entry. Pierce v. Pierce (June 8, 1987), Greene App. No. 86CA42.

On December 19, 1988, the defendant moved for clarification of the court's decision of December 9, 1988.

The following day the plaintiff moved for a new trial.

By "Judgment Entry" filed February 24, 1989, the plaintiff's motion for a new trial was overruled.

By "supplemental decision" filed March 15, 1989, the trial court sustained the defendant's motion for clarification regarding the division of marital assets.

*2 On March 23, 1989, the plaintiff filed a notice of appeal from the order of February 24, 1989 overruling

plaintiff's motion for a new trial. There are five assignments of error.

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN ORDERING THE VENUE OF THE SECOND DAY OF TRIAL CHANGED TO GREENE COUNTY.

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN CONSIDERING PSYCHOLOGICAL REPORTS PREPARED IN CONTRAVENTION OF THE STANDARDS OF REVISED CODE SECTION 3209.04 IN MAKING ITS AWARD OF PERMANENT CHILD CUSTODY TO THE DEFENDANT-APPELLEE.

THE JUDGMENT AWARDING PERMANENT CHILD CUSTODY TO THE DEFENDANT-APPELLEE IS INSUFFICIENT TO SATISFY THE MINIMUM REQUIREMENTS OF CIVIL RULE 52.

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN GRANTING PERMANENT CUSTODY TO THE PARTY WHO WAS NOT THEIR PRIMARY CUSTODIAN.

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN ENTERING ITS "SUPPLEMENTAL DECISION" (DOCKET NO. 46).

It is clear from the record that there was no change in venue ordered in this case. In the absence of an objection we see no prejudicial error in having the second day of the trial in Xenia rather than Dayton. The first assignment of error is overruled.

Civil R. 52 specifically provides that a "judgment may be general for the prevailing party" unless one of the parties makes a timely request for findings of fact and conclusions of law.

If the "decision" of December 9, 1988 is a final order a timely request for findings had to be made not later than seven days after the party requesting findings received "notice of the court's announcement of its decision."

It is reasonably clear from the "supplemental decision" of March 15, 1989 that the trial court intended the "decision" of December 9, 1988 to be a judgment and final order. In the "supplemental decision" the court found "it is no longer within this Court's control to address the issue of who may live in the residence prior to its sale."

This case cries out for findings of fact and conclusion of law if there is to be a meaningful appellate review. It also appears that the plaintiff's attorney may have been justifiably confused concerning the finality of the "decision" of December 9, 1988. In our view the plaintiff did not have fair notice of the finality of the "decision."

Because of the irregularities in these proceedings we sustain the third assignment of error and reverse the final order of February 24, 1989 overruling plaintiff's motion for a new trial. Assignments of error numbered two, four, and five are overruled without prejudice to their being asserted in any future proceedings.

We also bring to the attention of the trial court the last paragraph of Civ.R. 59(A). It provides:

On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and enter a new judgment.

We reverse and remand for further proceedings including, but not limited to, reconsideration of plaintiff's motion for new trial, and consideration of the options available to the trial court pursuant to the last paragraph of Civ.R. 59(A).

WOLFF, P.J., and FAIN, J., concur.

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